

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**)
Plaintiff,)
v.)
**AMERICAN FREIGHT
MANAGEMENT COMPANY, LLC,**)
Defendant.)
Civil Action No.
2:19-CV-00273-MHH

CONSENT DECREE

I. RECITALS

1. On February 14, 2019, the U.S. Equal Employment Opportunity Commission (“EEOC” or the “Commission”) filed this civil action against Defendant American Freight Management Company, LLC (“Defendant” or “American Freight”) alleging that it discriminated against a class of female applicants by failing to hire them because of their sex, in violation of Sections 703(a)(1), (a)(2), and (k) of Title VII of the Civil Rights Act (“Title VII”), 42 U.S.C. § 2000e-2(a)(1), (a)(2), and (k). In its Complaint, the Commission alleged that since at least January 1, 2013, Defendant has intentionally denied and continues to deny employment to female applicants seeking sales and warehouse jobs at Defendant’s stores nationwide because of their sex. American Freight denies these allegations, and nothing herein shall be construed as an admission of liability by American Freight. Rather the parties have entered into this Decree in order to resolve the lawsuit.

2. The parties agree, and the Court finds, that this Court has jurisdiction of the subject matter of this action and of the Parties, that venue is proper, and that all administrative prerequisites have been met.
3. For the purpose of amicably resolving disputed claims, the Parties jointly request this Court to adjudge as follows:

II. SCOPE AND DURATION OF DECREE

4. This Decree resolves all issues and claims arising out of EEOC Charge No. 420-2014-00876 and the Commission's Complaint in Civil Action No. 2:19-CV-00273-MHH. The EEOC will not use Charge No. 420-2014-00876 as the jurisdictional basis for filing any other lawsuit. This Decree does not affect or resolve any other charge or otherwise limit the EEOC's authority to process or litigate any other charge of discrimination filed against Defendant.
5. This Decree applies to all facilities nationwide owned by American Freight LLC.
6. The provisions of this decree are effective immediately upon the date that the Decree is entered by the Court ("the Effective Date") and shall be binding upon the Parties to this lawsuit for three years after the Effective Date.

III. INJUNCTIVE RELIEF

7. Defendant and its supervisors, managers, officers, directors, and successors (collectively "Defendant") are enjoined from discriminating against any job applicant on the basis of sex.
8. Defendant is enjoined from engaging in any act, policy, or practice that has the purpose or effect of discriminating against any applicant for employment on the basis of sex.
9. Defendant is enjoined from retaliating in any way against any person because such person has opposed any practice made unlawful under Title VII; filed a charge of discrimination under Title VII; testified or participated in any manner in any investigation, proceeding, or hearing under Title VII; or asserted any rights or received any benefits under this Decree.

IV. MONETARY RELIEF

10. **Establishment of the Settlement Fund:** Within forty-five (45) days of the Effective Date of the Decree, Defendant shall deposit \$5,000,000.00 (consisting of \$1,000,000.00 in back-pay and \$4,000,000.00 in compensatory damages) into an interest-bearing Qualified Settlement Fund (“Settlement Fund”), to be distributed among the Eligible Claimants as defined below. The Settlement Fund shall be used only to provide monetary awards to Eligible Claimants and for other purposes expressly authorized by this Decree. Defendant will notify the EEOC in writing after it has completed payment into the Settlement Fund.

11. Within sixty (60) days of the Effective Date of the Decree, Defendant shall provide to the EEOC: (1) a list (in comma delimited or other Excel-compatible format) of the full names of all known applicants for sales and/or warehouse positions at American Freight between July 8, 2013, and December 31, 2021, who were not hired; (2) the gender of each such individual, where disclosed by the applicant; (3) for each individual who self-identified as female and for each individual whose gender was not disclosed by the applicant, Defendant shall additionally include the individual’s birth date, social security number (if available), last known address, last known e-mail address, and last known telephone number; and (4) copies, in electronic form, of all application materials in its possession submitted by such applicants for sales and/or warehouse positions during that time period. Applicants whose self-identified gender is female shall be considered Potential Eligible Claimants (see Paragraph 12(a)). Applicants whose self-identified gender is unavailable and for whom an e-mail address is available shall be considered Potential Eligible Claimants (see Paragraph 12(a)). For applicants whose self-identified gender is unavailable and for whom an e-mail address is not available, the EEOC shall, by comparing such applicants’ first names to Social Security Administration’s “National Data on the relative frequency of given names in the population of U.S. births where the individual has a Social

Security Number" for the years 1970-2018, identify each such applicant who has at least a 5% probability of being female; all such applicants so identified by the EEOC and applicants whose first names do not match names in the Social Security Administration data referenced in this sentence shall be considered Potential Eligible Claimants (see Paragraph 12(a)). Defendant's obligations under this Paragraph shall extend to any applicant information and application materials that may be in the possession of third-party vendors utilized by Defendant, which Defendant shall obtain from such vendors as needed to comply with this Paragraph.

12. **Eligible Claimants:** For purposes of this Decree, the following definitions shall apply:

- a. Any person who applied and was not hired for employment in a sales or warehouse position at any company-owned American Freight store between July 8, 2013, and December 31, 2021, and who is identified as female or possibly female based on the procedure outlined in Paragraph 11, are "Potential Eligible Claimants."
- b. An "Eligible Claimant" is a Potential Eligible Claimant who, at the time of her application, satisfied the stated minimum qualifications for the job for which she applied and was female.

13. **Claims Administrator:** Simpluris, Inc., shall be the Claims Administrator. The Claims Administrator shall be responsible for (1) sending notices and claim forms related to settlement, after having first updated addresses of potential claimants; (2) receiving claim forms; (3) sending notification of monetary awards and releases; (4) issuing checks to Eligible Claimants from the Settlement Fund; (5) issuing related tax documents; (6) evaluating, to the extent requested by the EEOC, whether Potential Eligible Claimants meet the criteria to be Eligible Claimants; (7) complying with all tax reporting and withholding requirements imposed on the Settlement Fund under applicable tax laws; and (8) performing such other administrative tasks as are reasonably necessary to facilitate the claims process. All expenses, fees, and costs of the Claims Administrator

shall be paid by Defendant except that, as described in Paragraph 24, interest accrued by the Settlement Fund may be used to offset these expenses, fees, and costs.

14. **Transmission of Claims Packages:** Within one-hundred and eighty (180) calendar days of the Effective Date of the Decree, the EEOC shall provide the Claims Administrator a list of Potential Eligible Claimants. Within thirty (30) calendar days after receiving the list of Potential Eligible Claimants, the Claims Administrator shall send the “Claims Package” attached hereto as Exhibit A to all individuals on the list. For Potential Eligible Claimants for whom Defendant has an e-mail address, the Claims Administrator shall send the Claims Package to such individuals via e-mail. For all other Potential Eligible Claimants (as well as any Potential Eligible Claimants to whom e-mail messages were sent but were returned as undeliverable), the Claims Administrator shall transmit the Claims Package and all subsequent correspondence via U.S. Mail. The Claims Administrator shall provide all Potential Eligible Claimants, however initially contacted, the option to receive subsequent communications via e-mail or via U.S. Mail.

15. **Submission of Claim Forms:** Potential Eligible Claimants who seek to recover monetary compensation must complete a claim form and cause it to be received by the Claims Administrator within forty-five (45) calendar days after the sending of the Claims Packages to the potential Eligible Claimants. The claim form must be received by the Claims Administrator on or before such date in order to be considered. The Claims Administrator shall maintain a secure website that all Potential Eligible Claimants, however initially contacted, may use to submit claims forms and any other necessary documents electronically. The Claims Administrator shall encourage all Potential Eligible Claimants to submit documents via the secure website. However, all Potential Eligible Claimants shall be provided the option to submit claims documents via U.S. Mail. Within sixty (60) calendar days after the sending of the Claims Packages to Potential Eligible Claimants,

the Claims Administrator shall provide the EEOC with electronic copies of all timely-received claim forms and notify Defendant of the number of claim forms received.

16. **Confidentiality of Claim Forms:** Claim forms received by the Claims Administrator and the EEOC shall be treated confidentially and shall not be disclosed to Defendant or any other person or entity, except that such claim forms may be submitted confidentially to the Court if requested by the Court or as necessary for tax purposes.

17. **Late Claims:** The EEOC may, in its sole discretion, accept claim forms received after the deadline specified in Paragraph 15 but prior to the end of the Check Deposit Deadline specified in Paragraph 27 (“Late Claims”), and include such individuals who are Eligible Claimants in the distribution(s) of funds specified in Paragraphs 22 and/or 27, if time permits. The Claims Administrator shall provide the EEOC with electronic copies of Late Claims upon receipt and notify Defendant of the number of Late Claims received. For any Late Claims for which the EEOC has not made such an exception, the Claims Administrator, upon the EEOC’s approval, shall notify the late-filing individuals that their claims are untimely and that they are not eligible for any monetary award.

18. **Determination of Claims:** Within ninety (90) calendar days after receiving timely claim forms from the Claims Administrator, as provided in Paragraph 15, the EEOC shall determine, in its sole discretion, which individuals who submitted claim forms to the Claims Administrator are Eligible Claimants and the amounts of monetary relief from the Settlement Fund to be awarded to each such Eligible Claimant, and will provide the Claims Administrator with a list of Eligible Claimants and the amount(s) each Eligible Claimant is to receive in lost wages and compensatory damages. The EEOC shall, in its sole discretion, determine the allocation of the Settlement Fund to Eligible Claimants based on the agency’s assessment of the claim forms submitted. Alternatively, the EEOC may instruct the Claims Administrator to determine, using criteria specified by the

EEOC in its sole discretion, to make the determinations described in this Paragraph, which the EEOC may review before the Claims Administrator finalizes them.

19. **Contingency Fund:** The EEOC may direct the Claims Administrator to withhold from initial distribution an amount not to exceed \$20,000 as a contingency fund to address any errors in the determination of claims that may subsequently come to light.

20. **Notification of Awards:** Within fourteen (14) calendar days after the determination of claims as provided in Paragraph 18, the Claims Administrator shall notify each Eligible Claimant of the amount of her monetary award through a letter in the form attached hereto as Exhibit B. Such notification shall be: (a) via e-mail for Eligible Claimants whom the Claims Administrator successfully contacted by e-mail in connection with the communications described in Paragraph 15 and who did not subsequently request that further communications be sent via U.S. Mail; (b) via e-mail for Eligible Claimants who requested that further communications occur via e-mail; and (c) via U.S. Mail for all other Eligible Claimants.

21. **Release of Claims:** Along with the notification of award, the Claims Administrator shall send to each Eligible Claimant a Release of Claims Form (a copy of which is attached hereto as Exhibit C). The Release of Claims Form shall be transmitted via e-mail or via U.S. Mail, in the same manner as the notification of awards described in Paragraph 20. Each Eligible Claimant will be notified that, in order to receive monetary payment under this Decree, she must execute and deliver to the Claims Administrator an executed Release. The Claims Administrator shall provide each Eligible Claimant the option to execute and submit a Release electronically using a secure website, or to execute a hard copy release and submit it via U.S. Mail. The letter accompanying the Release (attached hereto as Exhibit B) shall inform each Eligible Claimant that such Release must be signed and submitted to the Claims Administrator so that it is received by the Claims Administrator within forty-five (45) calendar days of the transmission of the notification of award

and obligate the Eligible Claimant to notify the Claims Administrator of any future changes of address for payment. Any Eligible Claimant whose properly executed Release is not actually received by the Claims Administrator within forty-five (45) calendar days of the transmission of the notification of award shall be ineligible to receive any relief under this Decree, except for good cause determined in the sole discretion of the EEOC and upon actual receipt of a properly executed Release prior to the Check Deposit Deadline (see Paragraph 27). The Claims Administrator shall provide all original signed Releases to Defendant and copies of those Releases to the EEOC.

22. **Distribution of Settlement Fund:** The Claims Administrator shall issue checks to each Eligible Claimant within thirty (30) calendar days of the date by which Releases must be received by the Claims Administrator. The Claims Administrator will provide Eligible Claimants the option to receive any monetary award via electronic deposit in lieu of a paper check.

23. **Returned or Undeposited Checks:** The Claims Administrator shall promptly notify the EEOC in writing of any checks that are returned or are not deposited after ninety (90) calendar days have elapsed from the date on which the settlement checks are mailed. If any Eligible Claimant's check is undeliverable or undeposited, and the Claims Administrator determines that the Eligible Claimant cannot be located, the missing Eligible Claimant shall receive no payments under the Decree.

24. **Costs:** All costs associated with the distribution of the Settlement Fund — including, without limitation, all costs associated with locating claimants, all postage costs related to the issuance and mailing of checks from the Settlement Fund and all costs associated with stopping payment on checks, taxes imposed on the earnings of the Settlement Fund, and all of the expenses, fees, and costs of the Claim Administrator — shall be paid from interest earned on the Settlement Fund. Any costs not covered from the interest accrued on the Settlement Fund shall be paid by Defendant.

25. **Claims of Deceased Persons:** If an Eligible Claimant is deceased, the monetary relief due to such individual shall be paid to a representative of the Eligible Claimant's estate or to next of kin, as determined by the EEOC in its sole discretion, provided that such recipient provides a properly executed Release.

26. **Tax Matters:** The Claims Administrator shall make applicable tax withholdings from the portion of any award designated as back-pay. The Claims Administrator shall issue an IRS Form W-2 to each person receiving a back-pay payment, and an IRS Form 1099 to each person receiving a compensatory damages payment. Defendant may not deduct the employer's share of any applicable payroll taxes from the amounts distributed to Eligible Claimants or from the Settlement Fund.

27. **Unspent Funds:** In the event that any portion of the Settlement Fund, including accrued interest, has not been disbursed after a period of one hundred and twenty (120) days has elapsed from the date on which the settlement checks were mailed by the Claims Administrator ("Check Deposit Deadline"), then any amount remaining in the Settlement Fund ("Unspent Funds") shall be redistributed to Eligible Claimants as additional payments of back-pay or compensatory damages, in amounts to be determined by the EEOC in its sole discretion. Within 14 days after the Check Deposit Deadline, the Claims Administrator shall notify the EEOC of the amount of the Unspent Funds remaining in the Settlement Fund. Within 30 days of that notification, the EEOC will specify to the Claims Administrator the Eligible Claimants who are to receive the Unspent Funds and the Amount to be paid to each such Eligible Claimant. The Claims Administrator shall issue such payments promptly to such individuals. In the event that, 120 days after such payments are issued, any Unspent Funds remain in the Settlement Fund, the Claims Administrator shall pay the remaining Unspent Funds to Women Employed. In no event shall there be any reversion of any part of the settlement funds to Defendant or to the EEOC.

V. TITLE VII COORDINATOR

28. Within sixty (60) days of the Effective Date of the Decree, Defendant shall appoint or hire a “Title VII Coordinator,” who shall be an individual with experience in Title VII, EEO compliance, human resources, and personnel matters. Defendant shall retain someone in this role for the duration of the Decree.

29. Defendant shall inform all employees of the appointment and function of the Title VII Coordinator in writing within ten (10) days of his or her appointment, and each individual who makes a complaint or report of discrimination (whether written or oral) to Defendant’s Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management shall again receive, upon making a complaint or report, a written notice informing him/her of the existence and function of the Title VII Coordinator. Both the initial notice and the notice distributed upon receipt of a complaint or report shall provide the name, telephone number, electronic mail address, and mailing address at which the Title VII Coordinator may be reached.

30. Within ninety (90) days of the Effective Date of the Decree, Defendant will ensure that the Title VII Coordinator has adequate staff and other resources to accomplish all his/her responsibilities under this Decree. Defendant is not required to hire additional employees if its current staffing is adequate to ensure that Defendant fully complies with Title VII and this Decree.

31. The Title VII Coordinator shall have the following responsibilities:

- a. Overseeing generally Defendant’s compliance with the provisions of this Consent Decree and with Title VII generally.
- b. Creating and implementing the training program provided for in Paragraphs 60 through 65 of this Decree;

- c. Reviewing the policies and procedures that are within the scope of Paragraphs 36 and 37, and making any revisions needed to ensure that employees and applicants are afforded equal employment opportunity guaranteed by Title VII;
- d. Conducting the Decree Orientation meeting after the Effective Date of the Decree;
- e. Assisting all of Defendant's Human Resources, supervisory, and management employees nationwide in complying with Title VII in hiring decisions and in complying with this Decree;
- f. Advising Defendant about appropriate discipline of and performance appraisals for any employee found to have violated Defendant's EEO policies (the Policy, as defined in Section VII, below) or any provision of this Decree;
- g. Investigating independently and confidentially all complaints or reports of sex discrimination in hiring or of retaliation received by Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management;
- h. Making recommendations to Defendant regarding the appropriate disciplinary or corrective action to take to resolve a complaint or report of sex discrimination in hiring or of retaliation received by Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management;
- i. Maintaining detailed records of all complaints or reports of sex discrimination in hiring received by Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management, the investigation of such complaints or reports, and resolution thereof;

- j. Providing to the EEOC every six (6) months during the term of this Decree a report of Defendant's compliance with each of the provisions of this Decree as detailed in Paragraph 58; and
- k. Ensuring that the notice attached to this Decree (Exhibit D) is timely posted in all store locations where all other employee-related notices are posted.

VI. DECREE ORIENTATION

- 32. Within sixty (60) days of the Effective Date of the Decree or within fifteen (15) days after his or her hire, whichever is later, the Title VII Coordinator shall meet with Defendant's CEO and other members of Defendant's Executive Team ("Decree Orientation Meeting").
- 33. During the Decree Orientation Meeting, the Title VII Coordinator will thoroughly detail all provisions of the Decree, discuss and explain all changes in policy and procedures affected by the Decree, and shall emphasize the legal ramifications which may be caused by Defendant's breach of, or failure to comply with, the terms and conditions set forth in this Decree.
- 34. Attendance at the Decree Orientation Meeting shall be mandatory for all individuals specified above.
- 35. Prior to commencing the Decree Orientation Meeting, the Title VII Coordinator will provide the Commission with the date, time, and location for when the meeting will be conducted, and the Commission may choose to send up to two representatives to attend the Decree Orientation Meeting. Once the meeting has occurred, the Title VII Coordinator will certify that fact to the Commission.

VII. ANTI-DISCRIMINATION POLICY

- 36. Within thirty (30) days of the Effective Date of the Decree, Defendant will review its existing policies and procedures and adopt or affirm policies and procedures (collectively referred

to as the “Policy” or “Anti-Discrimination Policy”), sufficient to ensure that Defendant provides equal employment opportunities to all applicants and employees without regard to sex.

37. The Policy must be written to be easily understandable to a lay person and shall include at a minimum:

- a. A strong and clear commitment to preventing unlawful discrimination in the workplace, including sex discrimination in hiring and other employment decisions;
- b. A strong and clear statement that discrimination based on sex is prohibited discrimination under Title VII, and that hiring and other employment decisions may not be made on the basis of sex;
- c. A strong and clear statement encouraging persons who believe that they or others have been discriminated against based on sex to report such concerns to Defendant’s Human Resources Department, Governance/Ethics Hotline, or any member of executive management;
- d. An assurance of non-retaliation for persons who report unlawful discrimination and/or retaliation, and for witnesses who provide testimony and/or assistance in the investigation(s) of such unlawful discrimination and/or retaliation;
- e. A confidential, toll-free, employee hotline number for reporting concerns about sex discrimination (including sex harassment), or retaliation and where such complaints or reports may be communicated;
- f. A clear explanation of the steps an employee may take to report sex discrimination or retaliation — including the options of making such a report to the Title VII Coordinator, any member of executive management, company’s Governance/Ethics Hotline, Employee Relations Hotline — which steps must include the options of making an oral or written complaint or report in the language of the employee’s choosing;

- g. A statement that the EEOC will accept and investigate charges of unlawful discrimination (including harassment) and/or retaliation at no charge to the complaining party and that provides the EEOC's web address;
- h. A clear explanation of the steps managers and Human Resources staff must take upon receiving a report of sex discrimination or retaliation, which must include bringing the complaint or report to the attention of the Title VII Coordinator;
- i. A clear statement that EEO compliance will be a component in performance appraisals for all managerial and supervisory positions;
- j. An assurance that Defendant will investigate complaints of sex discrimination and retaliation made to Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management, and that such investigation will be prompt, fair, and reasonable, and will be conducted by a person trained in investigating allegations of discrimination;
- k. A policy that Defendant shall not store documents related to the investigation in any complainant's personnel file, and that a record of all disciplinary actions taken against an employee for a violation of the Policy shall be kept in that employee's personnel file;
- l. An assurance that appropriate corrective action will be taken by Defendant to address any sex discrimination or retaliation, and to eradicate any unlawful conduct in the workplace;
- m. A description of the consequences, up to and including termination, that will be imposed upon employees who violate the Policy;
- n. A provision that Defendant will protect to the extent possible the confidentiality of persons who report unlawful sex discrimination (including sex harassment), and/or

retaliation, or who participate in an investigation into allegations of discrimination (including harassment), and/or retaliation;

o. An assurance that each time the Policy is modified, Defendant shall disseminate it to all employees;

p. The contact information for Defendant's Chief People Officer.

38. Within thirty (30) days after completion of the policy review required under Paragraphs 36 and 37, Defendant shall provide a copy of the Policy to any recruiters or employment agencies with whom it contracts for the purpose of supplying labor, temporary or permanent, for its facilities, and any other individuals who have any input into hiring at any of the stores covered by this Decree.

39. Within thirty (30) days after completion of the policy review required under Paragraphs 36 and 37, Defendant will post the Policy on the "Careers" tab on its website.

40. Within thirty (30) days after completion of the policy review required under Paragraphs 36 and 37, Defendant will distribute a copy of the Policy to all current employees and will provide a copy of the Policy to newly hired employees within ten (10) days of hire. Upon request made to Defendant's Human Resources Department or Title VII Coordinator, Defendant shall make reasonable efforts to make the Policy available in alternative formats as necessary for persons with literacy or language barriers that may prevent them from reading the policies.

41. Within thirty (30) days after completion of the policy review required under Paragraphs 36 and 37, Defendant shall post (and keep posted) the Policy, in a prominent location that is customarily used for displaying communications to employees at stores covered by this Decree.

42. Within thirty (30) days after completion of the policy review required under Paragraphs 36 and 37, Defendant will include an EEO statement and complaint procedure on the application materials made available to all job applicants at the time of application.

43. Within ten (10) days after completion of the policy review required under Paragraphs 36 and 37, Defendant shall forward a copy of the Policy to the Commission and certify that the Policy has been posted and distributed. Defendant shall notify the Commission of any subsequent revisions to the Policy within ten (10) days thereof.

VIII. DEVELOPMENT OF HIRING PROCEDURE AND POLICY

44. Within sixty (60) days after the Effective Date of the Decree, Defendant shall develop and implement a written policy and procedure and/or modify an existing policy and procedure concerning all hiring decisions (“Hiring Policy”) and provide a copy of the Hiring Policy to the EEOC.

45. The Hiring Policy shall be disseminated to all employees and every job applicant.

46. Defendant will post a link to the Hiring Policy on the “Careers” tab on its website.

47. The Hiring Policy shall state that Defendant is an “Equal Opportunity Employer” and that the Defendant “promotes a diverse workforce” or words of similar meaning. Defendant will review existing materials regarding recruitment, hiring, and training to eliminate, if applicable, any explicit expressions of sex-based applicant or employee preferences.

48. Defendant shall request that job applicants voluntarily provide EEO data, including race and gender information.

49. The Hiring Policy will also list a toll-free telephone number at Defendant’s corporate headquarters for any employee or job applicant to report alleged discrimination.

IX. HIRING RELIEF

50. The letter from the Claims Administrator to each Eligible Claimant attached hereto as Exhibit B shall invite all Eligible Claimants who wish to be considered for employment in a sales or warehouse position at an American Freight store covered by this Decree (see Paragraph 5) to submit an application within forty-five (45) days, identifying the position(s) and work location(s)

they are interested in being considered for (“Instatement Applications”). The Claims Administrator shall, along with Exhibit B, provide Eligible Claimants with a link to or URL for a website that Eligible Claimants may use to electronically submit an employment application. Defendant will place all Eligible Claimants who submit an employment application for a sales or warehouse position by the end of that 45-day application period on an Instatement List. Defendant will provide a copy of the Instatement List to the Commission within thirty (30) days of the end of the 45-day application period. When sales and warehouse vacancies occur at American Freight stores covered by this Decree, Defendant shall review the Instatement Applications for the location(s) at issue to determine if any person on the Instatement List has applied for and meets the minimum qualifications for the position at issue. During the term of this Decree, when Defendant fills any sales position at an American Freight store covered by this Decree, it shall make a conditional offer of employment to at least one person from the Instatement List for every five such positions filled. During the term of this Decree, when Defendant fills any warehouse position at an American Freight store covered by this Decree, it shall make a conditional offer of employment to at least one person from the Instatement List for every five such positions filled. All such offers will be conditional on successfully passing any lawful background check and/or drug screen applied to those hired for sales or warehouse positions by American Freight. Defendant shall not limit or steer Instatement List hires to particular regions or facilities except based on legitimate, nondiscriminatory business needs and/or applicant preference. If a person on the Instatement List declines an offer of employment from Defendant that is for a position in which the applicant’s Instatement Application expressed interest (i.e., sales or warehouse), that is made pursuant to this Paragraph, and that is located in a geographic area the claimant expressed willingness to work in, that person’s name may be removed from the Instatement List. If

Defendant exhausts the Instatement List prior to the expiration of this Decree, its duty to offer employment to individuals on the Instatement List is fulfilled.

51. When making employment offers to individuals on the Instatement List, Defendant shall not be required to offer employment to any unqualified person.

52. If a person on the Instatement List is not qualified for any sales or warehouse position that exists at stores covered by this Decree, Defendant may remove such person from the Instatement List after giving sixty (60) days' notice to the EEOC. Such notice must include an explanation setting forth all facts supporting Defendant's determination that the individual is not qualified for any sales or warehouse position and copies of any supporting documentation.

X. RECRUITMENT PLAN

53. Within sixty (60) days of the Effective Date of this Decree, Defendant shall develop and institute a Recruitment Plan ("Plan") to recruit and advance women in sales and warehouse positions. Defendant shall provide a copy of the finalized Plan to the EEOC prior to its implementation. The Plan will, at a minimum, contain the following provisions:

a. The Plan will include outreach and recruitment strategies aimed at increasing the number of female applicants, including announcement materials aimed at increasing applications from women, and collaboration with organizations that promote women's employment in this or similar industries.

b. The Plan will implement policies and procedures for evaluating and selecting applicants based on job-related criteria. This will include a review of all sales and warehouse positions to evaluate actual job requirements and establish job-related selection criteria for the positions. For any open position, Defendant will share the relevant job requirements and selection criteria with any manager who participates in the hiring process for that position.

- c. The Plan will implement a procedure for documenting the reasons for interviewing or not interviewing each applicant.
- d. The Plan will implement standard procedures for conducting interviews and evaluating applicant interview performance using job-related selection criteria. Defendant will share the relevant job requirements and selection criteria with any manager who participates in the interview. The Plan will implement a procedure for documenting the interview performance of each interviewee.
- e. The Plan will implement a procedure for documenting the reasons for Defendant's ultimate hiring decisions, as well as regular internal monitoring of those decisions by the Title VII Coordinator to ensure they are being made on a non-discriminatory basis.
- f. The Plan will establish a goal of achieving at each facility, for sales positions, a rate of female hiring that is equal to the percentage of applicants for sales positions during the preceding twelve months who were female.
- g. The Plan will establish a goal of achieving at each facility, for warehouse positions, a rate of female hiring that is equal to the percentage of applicants for warehouse positions during the preceding twelve months who were female.
- h. The Plan will also provide for quarterly monitoring of progress toward the goals set forth above at each facility, as well as an evaluation of any barriers to achieving the goal at each facility and a plan for eliminating those barriers. Defendant will document its findings in a written quarterly report, copies of which shall be attached to the applicable Semi-Annual Report (see Paragraph 58).

54. Defendant shall use best efforts to implement the Plan. "Best efforts" means devoting resources (including staffing and funding) that are designed to ensure that the objectives of the Plan are achieved throughout the term of this Decree. The fact that Defendant may not have

attained a rate of female hiring equal to one or both of the goals set forth above shall not, by itself, constitute a violation of this Decree.

55. Hiring-Official Appraisal: The Plan will implement procedures for including in the performance evaluation of any official involved in the hiring process—including officials who recruit applicants, review applications, conduct interviews, or make hiring decisions—a rating or metric that evaluates the official's compliance with the Plan and any other requirements of this Agreement related to hiring.

XI. RECORDKEEPING AND REPORTING

56. For the duration of this Decree, Defendant shall maintain all employment records required by 29 C.F.R. § 1602.14. Notwithstanding the preservation time periods described in 29 C.F.R. § 1602.14, Defendant shall keep and preserve the following records for the duration of this Decree, in electronic form: 1) all applications for employment; 2) all notes of interviews with an applicant, notes of other contact with an applicant, and notes of attempts to contact an applicant; 3) all applicant self-identification forms; 4) a database containing the following information, when known to Defendant, for each applicant: name, gender, social security number, address, telephone number, position applied for, date of application, interview date, date of job offer and positions offered, whether a job offer was accepted or rejected, whether an applicant withdrew from the application process; whether an applicant failed to respond to an interview request, and hire date or reason for rejection for employment; 5) the date a person on the Instatement List was offered employment, the position offered, whether the offer was accepted or rejected, and the documentation Defendant is required to make in Paragraph 52 of the Decree regarding its determination that a claimant on the Instatement List is unqualified; 6) documents related to each complaint or report of gender discrimination made to Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive

management by an applicant for employment in a sales and/or warehouse position, including the date the complaint or report was made, the name of the complainant, the allegations of the complaint, and what actions Defendant took, if any, to resolve the matter; and 7) documents related to Defendant's efforts to recruit women for employment, including but not limited to documents related to advertisements in publications serving female populations and documents related to outreach efforts Defendant made to female populations and communities in which it participates. At any time, the Commission may request a copy of all or a specified portion of these records.

57. Defendant shall maintain records of any complaints or reports of sex discrimination or retaliation concerning hiring for sales and/or warehouse positions made to (or otherwise known to) its Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management. These records shall include the following:

- a. the name of the person making the complaint or report;
- b. the date of the report or complaint;
- c. a detailed description of the allegations made (including a copy of the complaint or report, if made in written form);
- d. the names and job titles of any witnesses, alleged victims, and person(s) allegedly participating in the discriminatory or retaliatory conduct;
- e. all notes or other records created because of the investigation, including interview notes;
- f. records reflecting the conclusion(s) reached as a result of any investigation and what actions, if any, Defendant took to resolve the complaint or report.

58. Defendant shall provide a report to the Commission semi-annually during the term of this Decree ("Semi-Annual Report"). Each Semi-Annual Report must contain:

- a. a summary of all complaints or reports of sex discrimination made by female applicants for sales and/or warehouse positions received by or known to Defendant's Human Resources Department, Governance/Ethics Hotline, Employee Relations Hotline, or any member of executive management during the period covered by the Semi-Annual Report, or certification that there were no such complaints or reports during that period;
- b. a record of attendance of the training required by Paragraphs 60 and 61, below (see Paragraph 64);
- c. the names of Eligible Claimants removed from the Instatement List during the period covered by the Semi-Annual Report and the reason(s) therefor;
- d. a certification by Defendant that the Notice Posting required by this Decree remained posted during the time period preceding the report; and
- e. a report provided in a comma-delimited or other Microsoft Excel-compatible format, containing the following data for warehouse positions and for sales positions, at each store covered by this Decree (see Paragraph 5), for the period covered by the Semi-Annual Report: (1) a store number or other unique identifier for the store; (2) the district, region, or other such internal division of American Freight that the store was associated with during the reporting period; (3) the city and state of the store; (4) the number of applicants for each type of position; (5) the number of such applicants who are male, female, other, or of unknown sex; (6) the number of individuals hired for each type of position; and (7) the number of individuals hired for each type of position who are male, female, other, or of unknown sex.

59. The first semi-annual report shall be due six months after the Effective Date of the Decree. Subsequent reports shall be due every six months thereafter during the term of this Decree, except

that the final report shall cover a five-month period and shall be submitted thirty (30) days before the expiration of the Decree.

XII. TRAINING

60. Defendant shall provide annual training on employment discrimination and retaliation to all of its employees. The initial training will be scheduled and conducted within one hundred twenty (120) days after the Effective Date of the Decree. Defendant will prepare a description of the training program that will include the following information: (a) a detailed agenda; (b) curriculum vitae for the individual(s) and/or qualifications for the company who will conduct and/or develop the training; and (c) training materials. Defendant shall provide the description of the training program to the EEOC within ninety (90) days after the Effective Date of the Decree.

61. Defendant shall advise all staff in writing that the annual training program is mandatory for all employees. The annual training program shall last at least one hour, may consist of online interactive training, a web-based learning system, or any combination thereof, and shall include the following:

- a. Instruction on the requirements of Title VII of the Civil Rights Act of 1964, as amended, including the prohibition of sex discrimination in hiring;
- b. An in-depth discussion of discrimination, including what constitutes sex discrimination under Title VII, and including an emphasis on sex stereotyping as sex discrimination;
- c. A discussion of retaliation, including what constitutes retaliation under Title VII;
- d. A discussion of an employer's recordkeeping obligations under Title VII (directed to management employees, Human Resource employees, and trainers);

e. Instruction on any policies related to this Consent Decree, including but not limited to the Anti-Discrimination Policy (defined in Section VII) and the Hiring Policy (defined in Section VIII);

f. A discussion of Defendant's Anti-Discrimination Policy prohibiting discrimination and retaliation, including procedures and responsibilities for accepting, reporting, investigating and remedying discrimination and retaliation, and for management employees investigating and resolving complaints or reports of discrimination.

62. Defendant shall ensure that the CEO provides a statement, either pre-recorded or via video-conferencing, at the training sessions to inform participants of Defendant's Anti-Discrimination Policy, and that Defendant will not tolerate any discrimination in the workplace, and the consequences for discriminating in the workplace.

63. The training shall be presented by an outside human resources consultant, attorney, or third-party vendor who has specialized knowledge of employment discrimination and experience in labor and employment law to provide the training required to fulfill the training requirement in Paragraphs 60 and 61.

64. Defendant agrees to provide to the Commission a list of those who received such training and their work locations for all training sessions with each report as set forth in Paragraph 58.

65. In addition, Defendant will provide the training described in Paragraphs 60 and 61 to all newly hired employees within forty-five (45) days of the date of hire.

XIII. SUPERVISORY ACCOUNTABILITY

66. Defendant shall promote supervisory accountability by taking the following steps:

a. Providing anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 60 and 61;

- b. Providing anti-discrimination training to all its recruiters and any other individual employees, management or non-management, who participate in the hiring or promotion or assignment process;
- c. Disciplining, up to and including discharge, any supervisor or manager or recruiter who violates Defendants' policies against discrimination; and
- d. Distributing a copy of this Decree to all salaried management and recruitment personnel at all its facilities nation-wide within sixty (60) days of the Effective Date of the Decree.

XIV. NOTICE POSTING

- 67. Defendant shall post the Notice attached as Exhibit D in all of its facilities, within thirty (30) days of the Effective Date of the Decree in conspicuous places upon its premises where notices to employees are customarily posted, including on any electronic bulletin boards that are in use.
- 68. Defendant shall also keep posted in conspicuous places the notice poster required by Title VII, 42 U.S.C. § 2000e-10.

XV. MONITORING

- 69. The Commission shall have the right to monitor and review compliance with this Decree. The EEOC may request information or records from Defendant relevant to evaluating compliance with this Decree, which shall not be unreasonably withheld. Defendant will comply with a reasonable request for information or records within twenty-one (21) days of the request, or within such other, longer period as the parties may agree. Any dispute regarding the propriety of any request for additional information shall be resolved as provided in Section XVI ("Dispute Resolution").

XVI. DISPUTE RESOLUTION

70. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party thirty (30) days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. Prior to seeking relief from the Court, the complaining party shall confer with or attempt in good faith to confer with the other party about the dispute, in an effort to resolve it informally. As part of this conferral, the parties may, by mutual agreement, utilize a mediator, as long as any such mediation can be scheduled so as to be completed within the 30-day period referenced in this paragraph (or such longer period as may be agreed to by the parties). The party requesting mediation shall bear any fees or expenses associated with the mediation. If the parties are unable to resolve the dispute or alleged non-compliance within 30 days (or such longer period as may be agreed to by the parties), the complaining party may apply to the Court for appropriate relief. The term of the Decree shall automatically be extended as to the provision(s) at issue during the pendency of any dispute under this Paragraph.

XVII. MISCELLANEOUS PROVISIONS

71. The precise wording, format, and other details of the letters and questionnaire set forth in Exhibits A and B (including the subject line, contents, or other details of any cover emails) may be modified by mutual agreement of the Parties. The content of any additional communications between the Claims Administrator and Potential Eligible Claimants and Eligible Claimants that are not provided by this Decree shall be determined by agreement of the Parties. The Claims Administrator shall maintain a website that contains a “Frequently Asked Questions” page with basic information about this matter, whose content shall be approved in advance by agreement of the Parties.

72. For purposes of this Decree, references to members of American Freight's "executive management" includes its Chief People Officer and management officials at the Senior Vice President level and above.

73. The terms of this Decree are and shall be binding on the present and future directors, officers, managers, agents, successors and assigns of Defendant. At least twenty-one (21) days prior to any sale or other transfer of Defendant's business or sale or other transfer of all or a substantial portion of Defendant's assets, Defendant shall provide a copy of this Decree to any potential purchaser, potential transferee, or other potential successor, and shall contemporaneously notify the Commission of such sale or transfer.

74. Each of the parties shall bear its own costs, attorney fees, and expenses in this lawsuit and prosecution and defense of the Charge preceding it.

75. This Decree shall not be construed as placing any limit on remedies available to the Court in the event that any individual is found to be in contempt for a violation of this Decree.

76. If the Court finds any provision of this Decree unlawful, the Court will sever only such provision, and the remainder of the Decree will remain in full force and effect.

77. When this Decree requires a certification by Defendant of any facts, such certification will be made under oath or penalty of perjury by an officer or management employee of Defendant.

78. When this Decree requires Defendant to submit reports, certifications, notices, or other materials to the Commission, submissions shall be made to the attention of the Regional Attorney, Equal Employment Opportunity Commission, 1130 22nd Street South, Suite 2000, Birmingham, Alabama 35205.

79. Defendant represents that it employs all employees who work at stores owned by American Freight, LLC, and can provide the relief set forth in this decree.

XVIII. SIGNATURES

80. The parties agree to the entry of this Decree subject to final approval by the Court.

DONE and **ORDERED** this February 2, 2022.



MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE

BY CONSENT:

CHRISTOPHER LAGE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
131 M. Street NE
Washington, D.C. 20507

By:



Marsha Rucker
Regional Attorney

Date:

Jan 31, 2022

AMERICAN FREIGHT MANAGEMENT COMPANY, LLC

By:

DocuSigned by:

Will Powell
WFM Tell, CEO and President

Date: 1/31/2022

EXHIBIT A

[CLAIMS ADMINISTRATOR LETTERHEAD]

[Insert Name and Address]

Dear _____:

As part of the settlement of a lawsuit alleging sex discrimination in hiring, we have been retained by the Equal Employment Opportunity Commission (EEOC) and American Freight Management Company, LLC (“American Freight”) to contact job applicants who may be eligible for relief as part of the settlement. There has not been a finding that American Freight engaged in discrimination, but the EEOC and American Freight agreed to resolve the lawsuit and engage in collaborative efforts to further strengthen American Freight’s hiring practices.

You may be eligible to participate in the settlement if you are a woman who applied for a sales or warehouse job at one of American Freight’s stores between July 8, 2013 and December 31, 2021, and if you were qualified for such employment.

In order to be considered for potential inclusion in this settlement, you must complete and return the attached claims form **on or before [DATE]**. [INSTRUCTIONS ON HOW TO SUBMIT, INCLUDING ELECTRONIC/WEBSITE OPTION OR US MAIL].

Upon receipt of your completed form, you will be informed within approximately [TIME PERIOD] whether you are eligible for relief as part of the settlement or not. The EEOC or I may also contact you to request additional information.

If you are found to be an eligible claimant, you will also have the opportunity to be considered for preferential hiring with American Freight if you are qualified for an available position.

If your address or other contact information changes after you submit a claims form, please notify us by *[insert procedure for updating contact information]*.

If you have any questions regarding this matter, please direct your questions to *[insert applicable telephone number]* or via email at *[insert applicable email address]*. Please allow five business days for us to respond to your inquiry.

Sincerely,

[insert name of applicable contact person]

[CLAIMS ADMINISTRATOR LETTERHEAD]

EEOC v. AMERICAN FREIGHT MANAGEMENT COMPANY, LLC
QUESTIONNAIRE FOR POTENTIAL ELIGIBLE CLAIMANT

Name and Address:

Telephone contact numbers:

Home:

Hours _____

Work:

Hours _____

Cell:

Hours _____

Email Address: _____

Please respond to the following to the best of your recollection:

1. Did you apply for a sales or warehouse job at any American Freight store anywhere within the United States, between July 8, 2013 and [DATE OF ENTRY OF DECREE]?

Yes
 No

2. Do you identify as female?

Yes
 No

(If you identified as female at the time of your application for employment at American Freight, please check “Yes” to Question 2.)

If you answered “Yes” to both Questions 1 and 2, please continue, answer Questions 3 and 4, below, and then sign and date this form.

If you answered “No” to either Question 1 or Question 2, please stop and do not complete this Questionnaire. You are not eligible for relief in this lawsuit.

3. Please state the location(s) of the American Freight store(s) that you applied to for employment. Please provide as much information (address, city, state) as you are able to.

4. Which type(s) of jobs did you apply for at American Freight (check all that apply):

Sales
 Warehouse
 Unsure

5. Do you have any of the following qualifications (check all that apply):

High School Diploma or Equivalent
 Sales Experience
 Warehouse experience
 Ability to work a flexible schedule, including evenings and weekends
 Ability to lift at least 50 pounds

I hereby declare, under penalty of perjury under the laws of the United States of America, that the answers provided above are true and correct to the best of my knowledge.

(Signature) Date: _____

EXHIBIT B – Letter from Claims Administrator

[Date]

Dear Ms. (Last Name):

We have been retained by the Equal Employment Opportunity Commission (EEOC) and American Freight Management Company, LLC (“American Freight”) to process claims based on a settlement of a lawsuit.

Eligibility for Settlement Payment

Based on a court settlement with American Freight, it has been determined that you are eligible to participate in a settlement based on your application for employment at American Freight between July 8, 2013 and_____. Based on the settlement, you are eligible to receive a total gross payment \$_____. There will be deductions for state and federal withholding for a portion of the payment and the remaining portion will be in a lump sum.

In order to receive this payment, you must do the following: (1) sign and return a copy of the enclosed tax reporting forms and, (2) sign and return the enclosed Release of Claims. The tax reporting forms and Release of Claims must be delivered to [INSERT CLAIMS ADMINISTRATOR] at_____no later than_____ [insert date ____ days from the date of this letter].

Eligibility for Preferential Hiring Consideration

As part of this settlement, you are also eligible to be considered for preferential hiring at American Freight. If you are interested in being considered for employment in a sales or warehouse position at a company-owned American Freight store, you may submit an application at [insert link] within forty-five (45) days of the date of this letter. You can also find information about sales and warehouse positions by visiting that website. In order to receive a hiring preference as part of this settlement, you must submit your application within this forty-five (45) day period.

Other Information

The payment described above does not constitute an admission by American Freight of any violation of any federal discrimination law or any other laws, and American Freight affirmatively denies that it at any time violated any federal discrimination law or any other laws.

If your address or other contact information changes, please notify us by [insert procedure for updating contact information].

If you have any questions regarding this matter, please direct your questions to [insert applicable telephone number] or via email at [insert applicable email address]. Please allow five business days to respond to your inquiry.

Sincerely,

[insert applicable contact person]

EXHIBIT C
CLASS MEMBER RELEASE

In consideration of \$ _____ paid to me in connection with the resolution of *EEOC v. American Freight Management Company, LLC*, Civil Action No. 2:19-CV-00273-MHH, I waive and release American Freight, and any related entities, and their directors, officers, employees, agents, successors and assigns (collectively referred to as "Company"), from any action or claims of sex discrimination arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq., that I or my representatives, heirs, executors, administrators or assigns had against Defendant American Freight prior to the date of this release and that were included in the EEOC's complaint in *EEOC v. American Freight Management Company, LLC*, Civil Action No 2:19-CV-0273-MHH, filed in the United States District Court for the Northern District of Alabama.

I understand that 20% of the above-referenced payment will be considered "lost wages" or "backpay," and that American Freight will make tax withholdings from that portion of the payment. I understand that the other 80% of the above-referenced payment will be considered "compensatory damages," and that American Freight will not make any tax withholdings from that portion of the payment. I understand that I may still owe additional taxes on both portions of the payment, and that I am ultimately responsible for paying any and all federal, state, and local taxes that I may owe.

I agree that I have had an opportunity to read and consider this Release, that I understand what this Release says, and that I am signing this Release voluntarily.

I understand that in order to be eligible for the above-referenced payment, the Company must receive this signed Release and completed tax forms, attached to the letter accompanying this Release of Claims Form, no later than _____ [insert applicable date per Consent Decree]. I understand that if I fail to return the signed Release and accompanying completed tax reporting forms on time, I will not be entitled to receive the payment described above.

Date: _____

Signature: _____

EXHIBIT D

NOTICE

The following notice is being posted pursuant to the terms of a Consent Decree reached between the Parties in EEOC v. American Freight filed in the United States District Court for the Northern District of Alabama, Civil Action No. 2:19-CV-00273-MHH.

Management of American Freight wishes to emphasize the company's fundamental policy of providing equal employment opportunity in all its operations and in all areas of employment practices. American Freight seeks to ensure that there shall be no discrimination against any employee or applicant for employment on the grounds of race, color, religion, sex, pregnancy, national origin, age or disability. This policy extends to all terms, conditions, and privileges of employment.

Pursuant to Title VII of the Civil Rights Act, it is unlawful for an employer to discriminate based upon the gender of an applicant or employee. Further, it is unlawful for any employer to retaliate against an employee because he or she has requested reasonable accommodation for disability, opposed discriminatory employment practices, or because he or she has filed a charge of discrimination with any municipal, state, or federal equal employment opportunity agency, or because he or she has participated in an investigation of a charge of discrimination.

American Freight respects the right of its employees and applicants for employment to work in an environment free from discrimination. Accordingly, American Freight reaffirms its commitment to complying with Title VII, in that it is our policy to prohibit all discrimination based on gender, race and national origin.

You may report any concerns of discrimination, harassment or unequal treatment to American Freight's twenty-four hour employee hotline at [insert 800 number here].

Any employee who believes that he/she has suffered discrimination on the basis of age, race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, or disability, has the right to contact the EEOC directly at 1-800-669-4000.

In compliance with federal law, no official at American Freight will retaliate against an employee who makes an internal complaint or report of discrimination or who contacts the EEOC.

This Notice shall remain posted for the term of three years.

American Freight Management Company, LLC

By: _____

_____ Date: